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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEVEN FLOYD VOSS,)	
)	
Petitioner,)	3:18-cv-00057-HDM-VPC
)	
v.)	
)	ORDER
ISIDRO BACA, et al.,)	
)	
Respondents.)	
)	
_____)	

This *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 and § 1651 (ECF No. 1) comes before the court for initial review pursuant to Rule 4 of the Rules Governing Habeas Corpus Cases Under Section 2254.

Petitioner in this action challenges a judgment of conviction that was entered in Case No. CR96P1581 in Second Judicial District Court of the State of Nevada. (See ECF No. 1 at 19). Petitioner previously challenged this judgment of conviction by way of a 28 U.S.C. § 2254 petition filed in federal court in Case No. 3:02-cv-00092-HDM-VPC. (*Id.* at 2). The petition in Case No. 3:02-cv-00092-

1 HDM-VPC was denied on the merits, and the Ninth Circuit declined to
2 issue a certificate of appealability.

3 Although petitioner was, at the time he filed the petition, in
4 state custody pursuant to a judgment of conviction, he did not file
5 his petition pursuant to § 2254, which applies when a prisoner is in
6 custody pursuant to a state court judgment.¹ Rather, he filed the
7 petition pursuant to § 2241, the general habeas statute, on the
8 grounds that the judgment of conviction in Case No. CR96P1581 was
9 "vitiating, reversed, or vacated" when the state court granted him
10 habeas relief and thus the judgment of conviction is "null and void."
11 (ECF No. 1 at 9).

12 Petitioner argues that in 2001, before filing his first federal
13 habeas petition, the state trial court granted his state habeas
14 petition in part and directed that he receive a new sentencing
15 hearing. To date, he asserts, he has not been re-sentenced.
16 Petitioner argues, without authority, that the court's grant of habeas
17 relief had the effect of voiding the judgment of conviction and that
18 because no new judgment of conviction was ever entered, he was being
19 held unlawfully in the state courts.

20 The state court ordered that petitioner receive a new sentencing
21 hearing. The order specifically held that the action was remanded for
22 the limited purpose of conducting a new sentencing hearing and did not
23 vacate the judgment of conviction. (See ECF No. 1 at 19-25).
24 Accordingly, the petitioner was a prisoner in state custody pursuant

25
26 ¹ The sentence petitioner challenges expired on March 4, 2018, about
27 a month after he filed the instant habeas petition. Petitioner remains in
28 custody on a life sentence without the possibility of parole and a life
sentence with the possibility of parole after 15 years pursuant to a
judgment of conviction entered in a separate criminal action. See
<http://167.154.2.76/inmatesearch/form.php> (last visited June 7, 2018).

1 to a judgment of conviction at the time he filed the instant petition,
2 and the only procedural vehicle available for his claims was 28 U.S.C.
3 § 2254.

4 Because petitioner previously challenged the judgment of
5 conviction in Case No. CR96P1581 through a § 2254 petition, the
6 instant petition is second or successive. The Court lacks
7 jurisdiction to consider a second or successive petition absent
8 authorization from the Court of Appeals. 28 U.S.C. § 2244(b). The
9 Court of Appeals very recently denied petitioner leave to file a
10 second or successive petition in Case No. 17-71612. Petitioner
11 therefore does not have, and will not likely obtain, authorization to
12 file a second or successive petition. The petition in this case must
13 therefore be dismissed for lack of jurisdiction.

14 Accordingly, IT IS HEREBY ORDERED that the petition in this
15 action (ECF No. 1) is DISMISSED for lack of jurisdiction.

16 IT IS FURTHER ORDERED that petitioner's motion for a stay (ECF
17 No. 3) is DENIED AS MOOT.

18 IT IS FURTHER ORDERED that petitioner is denied a certificate of
19 appealability, as jurists of reason would not find the court's
20 dismissal of this petition to be debatable or wrong.

21 IT IS FURTHER ORDERED that, pursuant to Rule 4 of the Rules
22 Governing Section 2254 Cases, that the clerk shall make informal
23 electronic service upon respondents by adding Nevada Attorney General
24 Adam P. Laxalt as counsel for respondents and directing a notice of
25 electronic filing of this order to his office. No response is
26 required from respondents other than to respond to any orders of a
27 reviewing court.

28 The clerk of court shall enter final judgment accordingly,

1 dismissing this action without prejudice.

2 IT IS SO ORDERED.

3
4 DATED: This 8th day of June, 2018.

Howard D. McKibben

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6 HOWARD D. MCKIBBEN
7 UNITED STATES DISTRICT JUDGE
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